

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

BECKLEY DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

CRIMINAL ACTION NO. 5:02-cr-00101-03

CRUSO R. WALLACE,

Defendant.

ORDER

Pending before the Court is Defendant's Motion to Alter or Amend Judgment [Docket 335], in which he seeks reconsideration of the Court's Memorandum Opinion and Judgment Order [Docket 334] entered on June 9, 2009, granting him a two-level reduction in sentence pursuant to 18 U.S.C. § 3582(c)(2) based on a reduction in the applicable guidelines range for crack cocaine offenses. In that motion, Defendant maintains that, despite that reduction, "his sentence should also be reduced pursuant to Amendment 706 of the United States Sentencing Guidelines." (Docket 335 at 2.) This argument, however, misconstrues the manner by which the § 3582(c)(2) reduction operates. Specifically, § 3582(c)(2) permits a court to reduce a defendant's term of imprisonment "if such a reduction is consistent with the applicable policy statements issued by the Sentencing Commission." Those policy statements, which are contained in § 1B1.10 of the United States Sentencing Commission Guidelines Manual, allow a court to reduce a defendant's sentence in a case

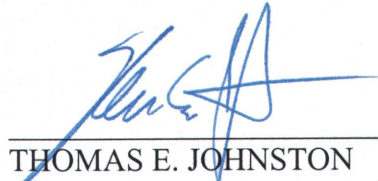
where the applicable guideline range has subsequently been lowered by an amendment to the Guidelines Manual. The list of applicable amendments expressly includes Amendment 706.

Thus, the previous two-level reduction in Defendant's sentence pursuant to § 3582(c)(2) effectuated the very reduction under Amendment 706 that Defendant now seeks. Accordingly, Defendant's Motion to Alter or Amend Judgment [Docket 335] is **DENIED**.

IT IS SO ORDERED.

The Court **DIRECTS** the Clerk to send a copy of this Order to the Defendant and counsel, the United States Attorney, the United States Probation Office, and the United States Marshal.

ENTER: July 31, 2009



THOMAS E. JOHNSTON
UNITED STATES DISTRICT JUDGE